

1 WOLF, GREENFIELD & SACKS, P.C.
2 Michael A. Albert (Admitted *Pro Hac Vice*)
3 Mass. B.B.O No. 558566
4 malbert@wolfgreenfield.com
5 Hunter D. Keeton (Admitted *Pro Hac Vice*)
6 Mass. B.B.O No. 660609
7 hkeeton@wolfgreenfield.com
8 Stuart V. C. Duncan Smith (Admitted *Pro Hac Vice*)
9 Mass. B.B.O No. 687976
sduncansmith@wolfgreenfield.com

10 600 Atlantic Avenue
11 Boston, Massachusetts, 02210
12 Tel: (617) 646-8000 Fax: (617) 646-8646

13 PROCOPIO, CORY, HARGREAVES & SAVITCH LLP

14 Victor M. Felix (SBN: 179622)

victor.felix@procopio.com

15 525 B Street, Suite 2200
16 San Diego, California, 92101

17 Tel: (619) 515-3229 Fax: (619) 744-5409

18 Attorneys for Defendant and Counter Claimant Acacia Communications, Inc.

19 UNITED STATES DISTRICT COURT
20 SOUTHERN DISTRICT OF CALIFORNIA

21 **ViaSat, Inc.,**
22 *a Delaware corporation,*

23 Plaintiff
24 and Counter Defendant,

v.
21 **Acacia Communications, Inc.,**
22 *a Delaware corporation,*

23 Defendant
24 and Counter Claimant.

25 Case No. 3:16-cv-00463-BEN-JMA

26 ***EX PARTE APPLICATION TO***
CONTINUE THE UPCOMING
FINAL PRETRIAL CONFERENCE

27 Judge: Hon. Roger T. Benitez
Mag. Judge: Hon. Jan M. Adler

28 **NO ORAL ARGUMENT**
APPLICATION UNDER
SUBMISSION

1 TO THE COURT, ALL PARTIES, AND THEIR COUNSEL OF RECORD:
2
3 PLEASE TAKE NOTICE that Defendant and Counter Claimant Acacia
4 Communications, Inc. (“Acacia”) applies for an Order to continue the upcoming
5 September 4, 2018 Final Pretrial Conference until after the resolution of the parties’
6 seven pending and potentially dispositive motions for summary judgment and to strike
7 and/or exclude expert opinion testimony. Continuing the Final Pretrial Conference
8 would avoid unnecessarily consuming the Court’s and the parties’ resources while the
9 motions are pending.

10 The Court has scheduled the Final Pretrial Conference for about a week from
11 now on September 4, 2018, at 10:30 AM. (Dkt. No. 192). As the Court is aware, the
12 parties have seven pending motions, several of which are potentially dispositive. (Dkt.
13 Nos. 75, 83, 86, 89, 93, 95, 98). The Court had previously consolidated the hearings
14 on these motions into a single hearing date, set for April 30, 2018. (Dkt. No. 152,
15 157). The Court thereafter vacated the hearings. (Dkt No. 160). Resolving those
16 motions may also resolve some or all of the issues in dispute in this case.

17 Good cause exists for continuing the Final Pretrial Conference. It would be
18 inefficient and impractical for the parties to prepare for and attend the Pretrial
19 Conference – including cross-country travel by several attorneys – without knowing
20 what issues (if any) remain for trial; accordingly, the Court’s and the parties’ efforts
21 may be wasted, in whole or in part. Hence, both the Court and the parties will benefit
22 from continuing the Final Pretrial Conference until after the Court resolves the
23 pending motions.

24 Acacia therefore respectfully requests that the Court issue an amended
25 scheduling order in the proposed form emailed to chambers. This *Ex Parte*
26 Application is based on the good cause set forth above, and all of the pleadings and
27 exhibits on file.

1
2 Date: August 28, 2018

Respectfully Submitted,

3 WOLF, GREENFIELD & SACKS, P.C.

4 By: s/Michael A. Albert

5 Michael A. Albert

6 Hunter D. Keeton

7 Stuart V. C. Duncan Smith

8 Attorneys for Defendant and Counter
9 Claimant Acacia Communications, Inc.

LOCAL RULE 83.3(G) DECLARATION

On August 27, 2018, I conferred with counsel for Viasat, Inc., at which time I provided notice of Acacia Communications, Inc.'s *Ex Parte* Application To Continue The Upcoming Final Pretrial Conference. I declare under penalty of perjury that the foregoing is true and correct.

Date: August 28, 2018

s/Michael A. Albert

Michael A. Albert

CERTIFICATE OF SERVICE

I certify that today I am causing to be served the foregoing document by CM/ECF notice of electronic filing upon the parties and counsel registered as CM/ECF Users. I further certify that, to the extent they are not registered CM/ECF Users, I am causing the foregoing document to be served by electronic means via email upon counsel for Viasat, Inc., per the agreement of counsel.

Date: August 28, 2018

s/Michael A. Albert

Michael A. Albert